

# Agenda Item Form

Agenda Date: Sept. 7, 2004

Districts Affected: 5

Dept. Head/Contact Information: Irene Ramirez, P.E., Interim City Engineer Ext. 4422/Bashar Abugalyon, P.E., Interim Assistant City Engineer Ext. 4157

## Type of Agenda Item:

- |   |   |  |
|---|---|--|
| <input type="checkbox"/> Resolution   | <input type="checkbox"/> Staffing Table Changes   | <input type="checkbox"/> Board Appointments        |
| <input type="checkbox"/> Tax Installment Agreements                               | <input type="checkbox"/> Tax Refunds              | <input type="checkbox"/> Donations                 |
| <input type="checkbox"/> RFP/ BID/ Best Value Procurement                         | <input type="checkbox"/> Budget Transfer          | <input type="checkbox"/> Item Placed by Citizen    |
| <input type="checkbox"/> Application for Facility Use                             | <input type="checkbox"/> Bldg. Permits/Inspection | <input type="checkbox"/> Introduction of Ordinance |
| <input type="checkbox"/> Interlocal Agreements                                    | <input type="checkbox"/> Contract/Lease Agreement | <input type="checkbox"/> Grant Application         |
| <input checked="" type="checkbox"/> Other <u>Conditional 'B' Building Permits</u> |   |  |

## Funding Source:

- ☐ General Fund  
☐ Grant (duration of funds: \_\_\_\_\_ Months)  
☐ Other Source: \_\_\_\_\_

## Legal:

☐ Legal Review Required      Attorney Assigned (please scroll down): None      ☐ Approved      ☐ Denied

Timeline Priority:   ☐ High      ☐ Medium      ☐ Low      # of days: \_\_\_\_\_

## Why is this item necessary:

Requested by: JNC LAND, L.P.

## Explain Costs, including ongoing maintenance and operating expenditures, or Cost Savings:

No costs

## Statutory or Citizen Concerns:

In accordance with Section 18.02.103.1.1.6 Prerequisite to Issuance of Permits  
Sombras Del Sol Unit Three Subdivision

## Departmental Concerns:

Department recommends approval

04 SEP -2 AM 11:13

Date: September 2, 2004

TO: City Clerk

FROM: Lucy L. McGee

Please place the following item on the Regular Agenda for the Council Meeting of:  
September 7, 2004

Item should read as follows:

Discussion and action on approval of Conditional "B" building permits for:

Sombras Del Sol Unit Three Subdivision (District 5)

Special Instructions: ENGINEERING DEPARTMENT FOR INFORMATION  
CONTACT INTERIM ASSISTANT CITY ENGINEER BASHAR ABUGALYON, P.E.  
AT 541-4157.

City Clerk's Use


Action Taken: \_\_\_\_\_ Item No. \_\_\_\_\_

ENGINEERING DEPARTMENT

Development Division

DATE: September 1, 2004

TO: Mayor & City Council

FROM: Bashar Abugalyon, P.E., Interim Assistant City Engineer 

SUBJECT: Conditional "B" Building Permits  
Sombras Del Sol Unit Three Subdivision (District 5)

The above referenced request is scheduled for City Council Regular Agenda on September 7, 2004. The purpose of this memorandum is to provide you with general information concerning this request.

Under the City Building and Administrative Code, Section 18.02.103.1.1.6, developer may obtain building permits for up to 25% of the lots before all of the required subdivision improvements have been completed and accepted by the City. These are commonly called, "unconditional permits". "Conditional A" permits are permitted for the next 25% (up to 50% of the total) of lots. To obtain "Conditional A" permits, the developer must provide water and sewer service, curbing (but not street paving), drainage facilities, etc., necessary for the site in question. The developer must additionally provide a signed acknowledgment by the permit applicant that the certificate of occupancy for that lot will not be signed until all of the improvements affecting that lot have been completed and approved by the City.

Lastly, "Conditional B" permits may be issued if the developer complies with all of the "Conditional A" requirements and obtains permission from the City Council. In order for the City Council to grant such permission, the Council must make a finding, "...that additional permits should be issued based upon economic hardship or public benefit demonstrated by the subdivider".

At this hearing, then, the City Council should hear testimony or other evidence from the developer that justifies allowing more permits to be issued before all of the needed improvements have been accomplished, before deciding the issue.

If I can be of any further assistance regarding this matter, please don't hesitate to contact me at extension 4157.

# JNC LAND, L.P.

September 1, 2004

Mr. Bashar Abugalyon, P.E.  
Interim Assistant City Engineer  
Engineering Department, Fourth Floor  
City of El Paso  
2 Civic Center Plaza  
El Paso, TX 79901

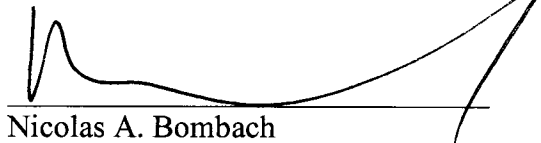
**RE: Sombras Del Sol Unit Three Subdivision, City and County of El Paso, Texas**

Dear Mr. Abugalyon:

JNC LAND, L.P., the owner and developer of Sombras Del Sol Unit Three Subdivision, respectfully requests that you grant us Conditional "B" acceptance. The Conditional "B" acceptance request is necessary for the builder to be issued an additional twenty-five percent of lots in Sombras Del Sol Unit Three, and provide an uninterrupted flow of construction work and housing product for the general public and to prevent financial hardship.

The utility extensions for the subdivision are hundred percent completed and the street paving is also completed. We greatly appreciate your assistance in this endeavor. Please call if you need additional information or have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Nicolas A. Bombach', written over a horizontal line.

Nicolas A. Bombach  
Vice President

NAB:ms

THE STATE OF TEXAS )

COUNTY OF EL PASO )

### **DEVELOPMENT AGREEMENT**

This **DEVELOPMENT AGREEMENT** (Agreement) is entered into, by and between JNC LAND, L.P., a Texas Limited Partnership, hereinafter referred to as the "Developer," and Saratoga Homes, Ltd., a Texas Limited Partnership, hereinafter referred to as "Applicant," on this 30<sup>th</sup> day of August, 2004 for the purpose of complying with Section 18.04.035 of the El Paso City Code (Building and Construction).

WHEREAS, Developer is the owner and developer of Sombras Del Sol Unit Three, a subdivision in the City of El Paso, El Paso County, Texas (the Subdivision); and

WHEREAS, the public improvements required to serve the Subdivision have not been constructed, installed and accepted for maintenance, Applicant desires to obtain a building permit(s) for a single-family, detached dwelling(s) on a lot, or lots, within the Subdivision; and

WHEREAS, the El Paso City Code (Building and Construction) (the "Code") provides that, although the Subdivision improvement have not been completed, building permits may be issued upon certain conditions, including without limitation, the requirement the Developer and Applicant execute and file this Agreement in the Office of the County Clerk of El Paso County, Texas;

NOW, THEREFORE, for good and valuable consideration, and in accordance with the provisions of Section 18.04.035 of the Code and any and all amendments, supplements, or successors thereto, Developer and Applicant understand and agree as follows:

#### **1. Incomplete Subdivision Improvements.**

Developer and Applicant acknowledge that all subdivision improvements for the Subdivision have not been constructed, installed and accepted for maintenance by the City of El Paso, or approved by the City engineer of the City of El Paso.

#### **2. Issuance of Building Permits.**

Developer and Applicant acknowledge that building permits for a lot within the subdivision may be issued for single-family detached dwellings (if otherwise permitted by applicable zoning and restrictions) although the required subdivision improvements have not been completed, provided that (i) water and sewer service, (ii) curbing conforming with the appropriate street design cross-section, (iii) any drainage facility and (iv) any other remaining public improvement required by the City Engineer in order to adequately provide for construction on the lot (collectively referred to herein as the "Minimum Improvements"), have been constructed and installed within the right-of-way servicing each such lot, and subject to the following additional conditions:

- A) An Unconditional Building Permit may be issued for the first twenty-five percent (25%) of the lots in the Subdivision (rounded to the next whole lot);
- B) A conditional "A" Building Permit may be issued for the next twenty-five (25%) of the lots within the Subdivision (rounded to the next whole lot) if, in addition to the construction and installation of the Minimum Improvements, the Developer and Applicant execute and file this Agreement with the Clerk of El Paso County, Texas; and
- C) A conditional "B" Building Permit may be issued for the remaining lots within the Subdivision if, in addition to the construction and installation of the Minimum Improvements, the City Council finds that additional permits should be issued based on economic hardship or public benefit demonstrated by the subdivider, and the Developer and the Applicant execute and file this Agreement with the Clerk of El Paso County, Texas.

#### **3. Risk of Commencement.**

Although Developer will make every effort to complete the Subdivision improvements and have them accepted for maintenance by the City of El Paso, Applicant expressly assumes ALL RISKS for commencing construction of a dwelling unit(s) prior to completion and acceptance of all Subdivision Improvements, and hereby releases and hold Declarant harmless from all claims, losses, damages and expenses (including court costs and attorney's fees) arising from the construction of dwelling unit(s) prior to the full completion and acceptance of all Subdivision Improvements by the City of El Paso. Declarant disclaims all representations and warranties with respect to the anticipated completion of Subdivision Improvements.

**4. Certificate of Occupancy**

Declarant and applicant also acknowledge that a Certificate of Occupancy will not be issued for any lot unless the dwelling unit constructed thereon meets the Building and Zoning Codes of the City of El Paso and, with respect to Conditional "A" Building Permits, the Subdivision has been approved for acceptance by the City Engineer, and with respect to Conditional "B" Building Permits, the Subdivision has been accepted for maintenance by the City of El Paso.

**5. Release.**

Upon satisfactory completion and acceptance of the required public improvements in the Subdivision by the City of El Paso, this Agreement shall terminate. The city Engineer is authorized by the Code to execute a formal release, which may be filed of record by the Developer or the Applicant.

**6. Binding Effect.**

This Agreement shall be binding upon and ensure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

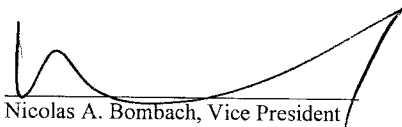
This Agreement is executed to be effective on the date and year first set forth above.

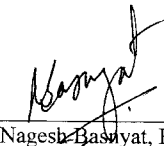
DEVELOPER:

JNC LAND L.P.  
A Texas Limited Partnership

APPLICANT:

SARATOGA HOMES, LTD  
A Texas Limited Partnership

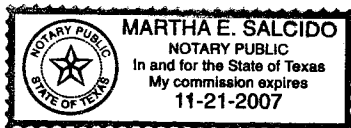
By:   
Nicolas A. Bombach, Vice President  
of JNC LAND L.P.

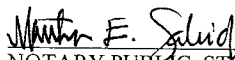
By:   
Nagesh Basnyat, Estimator  
Saratoga-Homes, LTD.

THE STATE OF TEXAS           )  
  )  
COUNTY OF EL PASO         )

This instrument was acknowledged before me on the 30<sup>th</sup> day of August, 2004  
by NICOLAS A. BOMBACH, Vice President of JNC LAND L.P., on behalf of said entity.

SEAL:

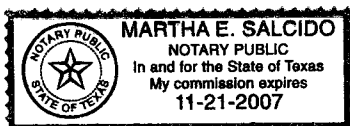


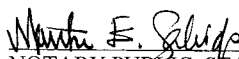
  
NOTARY PUBLIC, STATE OF TEXAS  
Printed Name: Martha E. Salcido  
My Commission Expires: November 21, 2007

THE STATE OF TEXAS           )  
  )  
COUNTY OF EL PASO         )

This instrument was acknowledged before me on the 30<sup>th</sup> day of August, 2004  
by NAGESH BASNYAT, Estimator.

SEAL:



  
NOTARY PUBLIC, STATE OF TEXAS  
Printed Name: Martha E. Salcido  
My Commission Expires: November 21, 2007